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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Petitioner,
13 v.
14 IVAN RAMIREZ,
15
16 Respondent.

CASE NO. 1:18-CV-00566-DAD-BAM

FINDINGS AND RECOMMENDATIONS AND
ORDER RE: IRS SUMMONS ENFORCEMENT

Taxpayer: Ivan Ramirez

16 Currently before the Court is Petitioner United States of America's petition to enforce an Internal
17 Revenue Service ("IRS") summons, which was filed on April 25, 2018. (ECF No. 1). The Court issued
18 an Order to Show Cause on May 2, 2018. (ECF No. 4). The Order to Show Cause, with the verified
19 petition and its supporting memorandum (ECF No. 3-1), was served on Respondent, on May 10, 2018, by
20 leaving a copy at Respondent's last and usual place of abode, 17120 Melba Dr. E, Madera, California,
21 with Respondent's father. (ECF No. 5). Respondent did not file an opposition or non-opposition to the
22 verified petition as provided for in the Order to Show Cause. The Court held a show cause hearing before
23 Magistrate Judge Barbara A. McAuliffe on June 29, 2018. At the hearing, John Edwards, Assistant United
24 States Attorney, personally appeared for Petitioner, and investigating Revenue Officer Lorena Ramos was
25 also present in the courtroom. Respondent did not appear at the hearing.

26 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce an
27 administrative summons issued May 24, 2017. *See* (ECF No. 1). The summons is part of an investigation
28 of the respondent to secure information needed to collect the tax liability for Form 940 for the calendar

1 periods ending December 31, 2013, December 31, 2014, December 31, 2015, and December 31, 2016,
2 and Form 943 for the calendar periods ending December 31, 2014, December 31, 2015, and December
3 31, 2016.

4 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to be proper.
5 I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government to bring the action. The Order to
6 Show Cause shifted to respondent the burden of rebutting any of the four requirements of *United States v.*
7 *Powell*, 379 U.S. 48, 57-58 (1964).

8 The Court has reviewed the petition and documents in support. Based on the uncontroverted
9 petition verified by Revenue Officer Ramos and the entire record, the Court makes the following findings:

10 (1) The summons issued by Revenue Officer Ramos on May 24, 2017 and served upon
11 Respondent on May 25, 2017, seeking testimony and production of documents and records in
12 Respondent's possession, was issued in good faith and for a legitimate purpose under I.R.C. § 7602, that
13 is, to secure information needed collect the tax liability for Form 940 for the calendar periods ending
14 December 31, 2013, December 31, 2014, December 31, 2015, and December 31, 2016, and Form 943 for
15 the calendar periods ending December 31, 2014, December 31, 2015, and December 31, 2016. (ECF No.
16 1, Exh. A).

17 (2) The information sought is relevant to that purpose.

18 (3) The information sought is not already in the possession of the Internal Revenue Service.

19 (4) The administrative steps required by the Internal Revenue Code have been followed.

20 (5) There is no evidence of referral of this case by the Internal Revenue Service to the
21 Department of Justice for criminal prosecution.

22 (6) The verified petition and its exhibits made a *prima facie* showing of satisfaction of the
23 requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

24 (7) The burden shifted to respondent, Ivan Ramirez, to rebut that *prima facie* showing.

25 (8) Respondent presented no argument or evidence to rebut the *prima facie* showing.

26 Based on the foregoing, it is therefore RECOMMENDED that the IRS summons served upon
27 Respondent, Ivan Ramirez, be enforced and that Respondent be ordered to appear at the IRS offices at
28 2525 Capitol Street, Suite 206, Fresno, CA 93721-2227, before Revenue Officer Ramos or her designated

1 representative, on or before a date to be set by Revenue Officer Ramos in consultation with Respondent,
2 then and there to be sworn, to give testimony, and to produce for examining and copying the books, checks,
3 records, papers, and other data demanded by the summons, the examination to continue from day to day
4 until completed, unless compliance with the summons is fully achieved prior to the date and time set by
5 Revenue Officer Ramos for respondent's appearance. In the event Respondent and Revenue Officer
6 Ramos are unable to agree on a date, an appointment date shall be set by Revenue Officer Ramos. Should
7 the appointment date need to be continued or rescheduled, the Respondent is to be notified in writing of
8 the later date for the appointment by Revenue Officer Ramos. It is further recommend that if it enforces
9 the summons, the Court retain jurisdiction to enforce its order by its contempt power.

10 These findings and recommendations are submitted to the United States District Judge assigned to
11 the case, under 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local Rules of the United States
12 District Court for the Eastern District of California. Within fourteen (14) days after being served with
13 these findings and recommendations, any party may file written objections with the court and serve a copy
14 on all parties. Such a document should be titled "Objections to Magistrate Judge's Findings and
15 Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after
16 service of the objections. The District Judge will then review these findings and recommendations
17 pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153
19 (9th Cir. 1991).

20 THE CLERK SHALL SERVE this and further orders by mail to Ivan Ramirez, 17120 Melba Dr.
21 E, Madera, CA 93638-9603.
22 IT IS SO ORDERED.

23 Dated: June 29, 2018

/s/ Barbara A. McAuliffe
24 UNITED STATES MAGISTRATE JUDGE
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